

2009 DRAFTING REQUEST

Bill

Received: **12/16/2008**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Miner**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Agriculture - soil and water**
 Environment - water quality

Extra Copies: **TKK, CTS**

Submit via email: **NO**

Pre Topic:

DOA:.....Miner, BB0266 -

Topic:

Replace Land and Water Conservation Board with council

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 12/18/2008	bkraft 12/22/2008	mduchek 12/22/2008	_____	sbasford 12/22/2008		
/1	btradewe 01/14/2009	kfollett 01/14/2009	rschluet 01/14/2009	_____	mbarman 01/14/2009		
/2	btradewe 01/23/2009	kfollett 01/23/2009	phenry 01/23/2009	_____	cduerst 01/23/2009		
/3	btradewe 01/30/2009	kfollett 01/30/2009	phenry 01/30/2009	_____	sbasford 01/30/2009		

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2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Replace Land and Water Conservation Board with advisory council
- Tracking Code: BB0266
- SBO team: Agriculture, Environment and Justice
- SBO analyst: Andrew Miner AM
 - Phone: 266-1103
 - Email: andrew.miner@wisconsin.gov
- Agency acronym: DATCP
- Agency number: 115
- Priority (Low, Medium, High): High

Intent: Eliminate the Land and Water Conservation Board and create a Land and Water Conservation Council that would only have an advisory role. See attached issue paper for background and suggested language.

Legislation to Eliminate the Land and Water Conservation Board, and Create a Land and Water Resource Council

This is a preliminary draft of legislation to eliminate the current Land and Water Conservation Board, and create a new Land and Water Resource Council.

- *The new Council would include the following members (this draft does NOT allow members to designate substitutes, so members must attend personally if they want to participate or vote):*
 - *3 members appointed by the Governor for staggered 4-year terms (one representing an agricultural organization, one representing an environmental organization, and one representing county government.*
 - *The secretary of agriculture, trade and consumer protection.*
 - *The secretary of natural resources.*
 - *The dean of the UW-Madison college of agricultural and life sciences.*
 - *The director of UW-extension.*
 - *The Wisconsin state conservationist for the natural resource conservation service of the United States department of agriculture (non-voting member, serves subject to the approval of NRCS).*
 - *The Wisconsin executive director of the farm service agency of the United States department of agriculture (non-voting member, serves subject to the approval of FSA).*
- *The new council, unlike the current Board, would be advisory only. It would have no actual program authority (unlike the current LWCB, which has considerable program authority under the farmland preservation, SWRM and nonpoint programs). It would have the general powers provided for councils under s. 15.09, Stats. (applies to all councils). Under s. 15.09, the council would meet at the call of the agency in which it is created (DATCP), and not on its own initiative.*

- *The new council would advise on the following matters:*
 - *Implementation of chs. 92 and 281, Stats., by the department of agriculture, trade and consumer protection and the department of natural resources, including the joint annual grant allocation plan under s. 92.14(13) and 281.65(4)(p), Stats.*
 - *Research, information and education needs related to land and water resources, including research, information and education needs related to the implementation of chs. 92 and 281, Stats.*
 - *Coordination of federal, state and local programs, related to land and water resources, that are relevant to the implementation of chs. 92 and 281, Stats.*
 - *Other matters related to land and water resources, at the joint request of the department of agriculture, trade and consumer protection and the department of natural resources. (For example, the council could advise on the working lands program under ch. 91, Stats., if DATCP and DNR asked it to do so).*
- *The gray-shaded portions of this draft eliminate current LWCB involvement in the farmland preservation program under ch. 91, Stats. These provisions show how the current law would need to be changed, to eliminate LWCB involvement, if DATCP's Working Lands Legislation were not enacted. (The Working Lands Legislation would eliminate LWCB involvement in the farmland preservation program, but would also makes other major legislative changes that would eliminate most of the material shown here.)*
- *The yellow-shaded portions of this draft eliminate current LWCB involvement in the nonpoint pollution program and other programs administered by DNR (mainly under ch. 281, Stats.). Much of the current involvement involves the priority watershed program which is soon scheduled to end.*

SECTION ____ . 15.07(1)(b)10. of the statutes is repealed.

SECTION ____ . 15.07(1)(cm) of the statutes is amended to read:

15.07(1)(cm) The term of one member of the ethics board(cm) The term of one member of the government accountability board shall expire on each May 1. The terms of 3 members of the development finance board appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms of the other 3 members appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every odd-numbered year. ~~The terms of the 3 members of the land and water conservation board appointed under s.~~

~~15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s. 15.135 (4) (b) 2m. shall expire on May 1 of an even-numbered year.~~ The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even-numbered year. The terms of the members of the cemetery board shall expire on July 1 in an even-numbered year. The term of the student member of the Board of Regents of the University of Wisconsin System who is at least 24 years old shall expire on May 1 of every even-numbered year.

SECTION _____. 15.07(5)(h) of the statutes is repealed.

SECTION _____. 15.135(4) of the statutes is repealed.

SECTION _____. 15.137(2) of the statutes is created to read:

(3) 15.137(2) LAND AND WATER RESOURCE COUNCIL. (a) *Creation*. There is created in the department of agriculture, trade and consumer protection a land and water resource council to advise on the following matters:

1. Implementation of chs. 92 and 281 by the department of agriculture, trade and consumer protection and the department of natural resources, including the joint annual grant allocation plan under s. 92.14(13) and 281.65(4)(p).

2. Research, information and education needs related to land and water resources, including research, information and education needs related to the implementation of chs. 92 and 281.

3. Coordination of federal, state and local programs, related to land and water resources, that are relevant to the implementation of chs. 92 and 281.

4. Other matters related to land and water resources, at the joint request of the department of agriculture, trade and consumer protection and the department of natural resources.

(b) *Voting members.* The land and water resource council shall include the following voting members.

1. Three members appointed by the governor for staggered 4-year terms, including one representative of an agricultural organization, one representative of an environmental organization, and one representative of county government.
2. The secretary of the department of agriculture, trade and consumer protection.
3. The secretary of the department of natural resources.
4. The dean of the college of agricultural and life sciences of the university of Wisconsin-Madison.
5. The director of the university of Wisconsin-extension.

(c) *Nonvoting members.* The land and water resource council shall include the following nonvoting members, subject to the agreement of their employing agencies:

1. The Wisconsin state conservationist of the natural resource conservation service of the United States department of agriculture.
2. The Wisconsin executive director of the farm service agency of the United States department of agriculture.

SECTION ____ . 91.01(2) of the statutes is repealed.

SECTION ____ . 91.03 of the statutes is amended to read:

91.03 Interdepartmental cooperation. All other departments and agencies of state government shall cooperate with the ~~board and the~~ department in the exchange of

information concerning projects and activities, including takings under eminent domain, which might jeopardize the preservation of land contemplated by this chapter. The department shall periodically advise other departments and agencies of state government of the location and description of land upon which there exist farmland preservation agreements or zoning for exclusively agricultural use and the departments and agencies shall administer their planning and projects consistent with the purposes of this chapter.

SECTION ____. 91.05(1) of the statutes is amended to read:

91.05(1) For the purpose of assisting local units of government to preserve agricultural lands, the department and the department of commerce, under standards prepared by the ~~board~~ department, and in connection with other state agencies, counties and county land conservation committees shall prepare or cause to be prepared, maps that locate lands in the state which should be considered for preservation because of their agricultural significance.

SECTION ____. 91.06 of the statutes is amended to read:

91.06 Certification. The ~~board~~ department shall review farmland preservation plans and exclusive agricultural use zoning ordinances submitted to it under ss. 91.61 and 91.78 and shall certify to the appropriate zoning authority whether the plans and ordinances meet the standards of subchs. IV and V, respectively. Certifications may be in whole or in part.

SECTION ____. 91.07 of the statutes is repealed and recreated to read:

91.07 Rulemaking authority. The department may promulgate rules to implement this chapter.

SECTION ____. 91.13(7), (8)(intro.) and (11) of the statutes are amended to read:

91.13(7) If the application for a farmland preservation agreement is rejected by the local governing body ~~or the department~~, the application shall be returned to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the ~~board~~ department. The ~~board~~ department shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (4) (a) to (g), approve or reject the application.

(8)(intro.) If an application is approved by the department ~~or, on appeal, by the board~~, the department shall prepare and send to the applicant a farmland preservation agreement which shall include the following provisions:

(11) An applicant may reapply for a farmland preservation agreement following a one-year waiting period from notice of final determination of the original application by the local governing body having jurisdiction, the department, ~~the board~~ or a court on appeal.

SECTION _____. 91.19(3), (5), and (6s)(a)1. and (b) to (d) of the statutes are amended to read:

91.19(3) If the request for relinquishment of the farmland preservation agreement or release of part of the land from the agreement is approved by the local governing body having jurisdiction, a copy of the application, along with the comments and recommendations of the reviewing agencies, shall be forwarded to the ~~board~~ department. The ~~board~~ department shall, within 60 days, upon consideration of the factors in sub. (2) (b) and (c) 2., approve or reject the application for relinquishment or release. If the ~~board~~ department approves the application it shall notify the local governing body having

jurisdiction and the department of revenue, prepare an instrument under sub. (7) and record it with the register of deeds of the county in which the land is located.

(5) If the application for relinquishment of the agreement or release of part of the land from the agreement is rejected by the local governing body having jurisdiction, the application shall be returned to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the ~~board~~ department. The ~~board~~ department shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (2) (b) and (c)2., approve or reject the request for relinquishment or release. If the ~~board~~ approves the application it shall notify the local governing body having jurisdiction and the department of revenue, prepare an instrument under sub. (7) and record it with the register of deeds of the county in which the land is located.

(6s)(a)1. An application for release of the land, made by either the owner or the local unit of government, is approved by the local governing body having jurisdiction and ~~the board~~ under the procedures of subs. (2) to (5).

(6s)(b) If an owner of land subject to a farmland preservation agreement opposes an application brought by a local unit of government for release of that land, the owner may appeal the approval of that application by the local governing body having jurisdiction to the ~~board~~ department according to the procedures in par. (c).

(6s)(c) If the application for release of any land from the agreement is approved by the local governing body having jurisdiction, the application shall be returned to the applicant, and a copy of the application to the owner, with a written statement regarding the reasons for approval. Within 30 days after receipt of a copy of the approved

application, the owner may appeal the approval to the ~~board~~ department. The ~~board~~ department shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (2) (b) and (c) 2., approve or reject the request to disapprove the release. If the ~~board~~ department approves the owner's appeal it shall notify the local governing body having jurisdiction.

(d) The ~~board~~ department may waive its approval authority under this subsection for applications affecting less than 5 acres of land.

SECTION _____. 91.61 of the statutes is amended to read:

91.61 Certification. Upon completion of county agricultural preservation plans described in this subchapter, copies of the plan may be submitted to the ~~board~~ department for review and certification under s. 91.06.

SECTION _____. 91.78 of the statutes is amended to read:

91.78 Certification. Copies of exclusive agricultural zoning ordinances may be submitted to the ~~board~~ department for review and certification under s. 91.06.

SECTION _____. 92.03(2) of the statutes is repealed.

SECTION _____. 92.04 of the statutes is repealed.

SECTION _____. 92.05(3)(i) of the statutes is repealed.

SECTION _____. 92.05(3)(m) of the statutes is created to read:

92.05(3)(m) *Tolerable erosion levels.* The department shall establish a tolerable erosion level based on an erosion rate that is acceptable and maintains long-term soil productivity.

SECTION _____. 92.10(1) of the statutes is amended to read:

(1) CREATION. There is created a land and water resource management planning program. The department, ~~board~~ and land conservation committees jointly shall develop and administer this program.

SECTION _____. 92.10(5) of the statutes is repealed.

SECTION _____. 92.10(7)(d) of the statutes is amended to read:

92.10(7)(d) *Plan submission*. A land conservation committee shall submit the land and water resource management plan to the ~~board~~ and department.

SECTION _____. 92.105(1) to (3) of the statutes are amended to read:

92.105(1) ESTABLISHMENT. A land conservation committee shall establish soil and water conservation standards. The standards for agricultural facilities and practices that are constructed or begun on or after October 14, 1997, and, if cost-sharing is available to the farmer under s. 92.14 or 281.65 or from any other source, for agricultural facilities and practices that are constructed or begun before that date shall be consistent with the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3). It shall submit these standards to the ~~board~~ department for review.

(2) GUIDELINES; REVIEW. The ~~board~~ department shall develop guidelines to be used for the establishment and administration of soil and water conservation standards. The ~~board~~ department shall review and shall approve or disapprove submitted soil and water conservation standards based on the guidelines it develops. If the ~~board~~ department approves soil and water conservation standards, it shall notify any appropriate zoning authority of its approval.

(3) APPROVED STANDARDS REQUIRED FOR FARMLAND PRESERVATION

CREDIT. A farmland preservation credit may not be allowed under subch. IX of ch. 71 for claims relating to any land to which this section applies unless the land conservation committee for the county where the property is located establishes soil and water conservation standards which are approved by the ~~board~~ department.

SECTION _____. 92.14(6)(b) of the statutes is amended to read:

92.14(6)(b) The department and the department of natural resources shall prepare an annual grant allocation plan identifying the amounts to be provided to counties under this section and ss. 281.65 and 281.66. In the allocation plan, the departments shall attempt to provide funding under this section for an average of 3 staff persons per county with full funding for the first staff person, 70% funding for the 2nd staff person and 50% funding for any additional staff persons and to provide an average of \$100,000 per county for cost-sharing grants. ~~The department shall submit that plan to the board.~~

SECTION _____. 92.14(6)(d) of the statutes is repealed.

SECTION _____. 92.14(12) of the statutes is repealed.

SECTION _____. 92.14(13) of the statutes is amended to read:

92.14(13) EVALUATION PLAN. The department, jointly with the department of natural resources, shall prepare a plan, which includes water quality monitoring and analysis, for evaluating the program administered under this section and s. 281.65 ~~and submit the plan to the board. The board shall make recommendations to the department and the department of natural resources on the plan. The department shall review and approve or disapprove the plan and shall notify the board of its final action on the plan.~~ The department shall implement any part of the plan for which the plan gives it responsibility.

SECTION ____ . 92.17(2)(c) of the statutes is repealed.

SECTION ____ . 281.20(5) of the statutes is repealed.

SECTION ____ . 281.65(3) of the statutes is repealed.

SECTION ____ . 281.65(3m)(cg) of the statutes is repealed.

SECTION ____ . 281.65(4)(e) of the statutes is amended to read:

281.65(4)(e) Promulgate rules, in consultation with the department of agriculture, trade and consumer protection, as are necessary for the proper execution and administration of the program under this section. ~~Before promulgating rules under this paragraph, the~~
~~department shall submit the rules to the land and water conservation board for review under sub. (3) (at).~~ The rules shall include standards and specifications concerning best management practices which are required for eligibility for cost-sharing grants under this section. The standards and specifications shall be consistent with the performance standards, prohibitions, conservation practices and technical standards under s. 281.16. The department may waive the standards and specifications in exceptional cases. The rules shall specify which best management practices are cost-effective best management practices. Only persons involved in the administration of the program under this section, persons who are grant recipients or applicants and persons who receive notices of intent to issue orders under s. 281.20(1)(b) are subject to the rules promulgated under this paragraph. Any rule promulgated under this paragraph which relates or pertains to agricultural practices relating to animal waste handling and treatment is subject to s. 13.565.

SECTION _____. 281.65(4)(k) and (o) of the statutes are repealed.

SECTION _____. 281.65(4)(p) of the statutes is amended to read:

281.65(4)(p) Jointly with the department of agriculture, trade and consumer protection, prepare the plan required under s. 92.14(13). ~~The department shall review and approve or disapprove the plan and shall notify the land and water conservation board of its final action on the plan.~~ The department shall implement any part of the plan for which the plan gives it responsibility.

SECTION _____. 281.65(4)(s) of the statutes is repealed.

SECTION _____. 281.65(4c)(b) and (c) of the statutes are amended to read:

281.65(4c)(b) The department shall use the system under par. (d) to determine the score of each project for which it receives an application under par. (a) ~~and shall inform the land and water conservation board of the scores no later than September 1 of each year.~~

(c) After determining project scores under par. (b), ~~the department shall notify the land and water conservation board of the projects that the department proposes to select for funding in the following year. The board shall review the proposal and make recommendations to the department. Before and before~~ November 1 of each year, the department shall select projects for funding under this subsection in the following year. To the extent practicable, within the requirements of this section, the department shall select projects so that projects are distributed evenly around this state.

SECTION _____. 281.65(4m)(d) of the statutes is amended to read:

(d) After the department considers the comments of the department of agriculture, trade and consumer protection on a plan under par. (c) and receives approval of the plan by every county to which it was sent and by the land and water conservation board, the department shall designate the plan to be an element of the appropriate areawide water quality management plan under P.L. 92-500, section 208.

SECTION ____. 281.65(5m) of the statutes is amended to read:

281.65(5m) Upon completion of plans by the department under sub. (4)(g), the governmental unit or regional planning commission under sub. (4m) and the department of agriculture, trade and consumer protection under sub. (5), ~~and upon receiving approval of the land and water board,~~ the department shall prepare and approve the final plan for a priority watershed or priority lake.

SECTION ____. 281.65(5q)(a) of the statutes is amended to read:

281.65(5q)(a) Notwithstanding sub. (5s), ~~neither the department nor the land and water conservation board~~ may not extend funding under this section for a priority watershed or priority lake project beyond the funding termination date that was in effect for the priority watershed or priority lake project on January 1, 2001, except as provided in par. (b).

SECTION ____. 281.65(5s) and (5w) of the statutes are amended to read:

281.65(5s) The department may make modifications, including designating additional sites as critical sites, in a priority watershed or priority lake plan with the approval of every county to which the department sent the original plan under sub. (4m)(c) ~~and of the land and water conservation board.~~ If the owner or operator of a site prevails in a final review under sub. (7) or the site is not designated as a critical site in the

original plan under sub. (5m) and the pollution is from an agricultural source and is not caused by animal waste, the department may not make a modification designating the site as a critical site unless the designation is based on a substantial increase in pollution from the site, on information about pollution from the site that was not available when the plan was prepared or on a substantial change to the criteria for designating a site as a critical site. This subsection applies to a priority watershed or priority lake plan completed before, on or after August 12, 1993.

(5w) ~~After the land and water conservation board approves a priority watershed or priority lake plan or a modification to such a plan that designates a site to be a critical site, the~~ The department shall notify the owner or operator of ~~that site~~ a site that is designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s). The notice shall inform the owner or operator of the designation and of the provisions in sub. (7) and either s. 281.20 or, if the pollution is caused primarily by animal waste, ss. NR 243.21 to 243.26, Wis. adm. code.

SECTION _____. 281.65(7)(b) of the statutes is repealed and recreated to read:

281.65(7)(b) The owner or operator of a site designated as a critical site under sub. (5m) or (5s) may request a contested case hearing under ch. 227 to contest that designation.

SECTION _____. 281.65(7)(c) of the statutes is repealed.

SECTION _____. 283.84(5) of the statutes is amended to read:

283.84(5) Beginning no later than September 1, 1998, and annually thereafter, the department shall report to the governor, the secretary of administration and the land

and water conservation board on the progress and status of each pilot project in achieving water quality goals and coordinating state and local efforts to improve water quality.